

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
June 28, 2016

STUDENT, ¹)	
through the PARENT,)	Hearing Officer: NaKeisha Sylver Blount
<i>Petitioner,</i>)	
)	Case No: 2016-0090
v.)	
)	Date Issued: June 28, 2016
District of Columbia Public Schools,)	
<i>Respondent.</i>)	

Hearing Officer Determination

SUBJECT MATTER JURISDICTION

Subject matter jurisdiction is conferred pursuant to the Individuals with Disabilities Education Act (“IDEA”), as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”); and D.C. Code 38-2561.02(a).

PROCEDURAL BACKGROUND

This is a due process complaint (“DPC”) proceeding pursuant to the Individuals with Disabilities Education Act (“IDEA”), as amended, 20 U.S.C. §§1400 et seq.

The DPC was filed on April 14, 2016 by Petitioner (Student’s parent), a resident of the District of Columbia, against Respondent, District of Columbia Public Schools (“DCPS”). On April 22, 2016, Respondent filed its timely Response, denying that Respondent denied Student a free appropriate public education (“FAPE”).

The parties convened a Resolution Session Meeting (“RSM”) in this matter on April 27, 2016. The parties did not reach an agreement during the RSM; however, they agreed to keep the resolution process open for the entire 30-day resolution period. Accordingly, the parties agreed that the 45-day timeline for the Hearing Officer’s Determination (“HOD”) in this matter began to run on May 15, 2016 and concludes on June 28, 2016.

The undersigned Impartial Hearing Officer (“IHO” or “Hearing Officer”) convened a Pre-hearing Conference (“PHC”) on May 17, 2016, during which the parties discussed and clarified the issues and the requested relief. At the PHC, the parties agreed that five-day

¹ Personal identification information is provided in Appendix A.

disclosures would be filed by June 7, 2016 and that the DPH would be held on June 14, 2016 and June 15, 2016. The PHC was summarized in the Pre-Hearing Conference Summary and Order (the "PHO") issued on May 19, 2016.

The DPH was held on June 14, 2016 and June 15, 2016 at the Office of Dispute Resolution, 810 First Street, NE, Room 2004. Petitioner elected for the hearing to be closed. Petitioner was represented by [PETITIONER'S COUNSEL], Esq. and DCPS was represented by [RESPONDENT'S COUNSEL], Esq.

Petitioner's and Respondent's disclosures were timely filed. At the DPH, Petitioner's exhibits P-1 through P-47 were admitted without objection. Respondent's exhibits R-1 through R-7 were over Petitioner's objection.

Petitioner called the following witnesses at the DPH:

- (a) Senior Educational Advocate²
- (b) Program Director (Nonpublic School)
- (c) Compensatory Education Provider³

Respondent called the following witness at the DPH:

- (a) Case Manager⁴
- (b) School Psychologist⁵

Petitioner and Respondent gave oral closing arguments.

ISSUES

As discussed at the PHC and reflected in the PHO, the following issues were presented for determination at the DPH.

- (a) Whether DCPS denied Student a FAPE by failing to provide him with an appropriate IEP on October 3, 2014 in that: (1) it does not provide sufficient hours of specialized instruction (full school week outside of the general education setting); (2) it reduces Student's behavioral support services by half without justification; (3) it does not describe "educational placement;" (4) it contains incorrect/inadequate information about Student including the goals, baselines, and Student's need for assistive technology and positive behavior intervention strategies.
- (b) Whether DCPS denied Student a FAPE by providing him an inappropriate educational placement from at least October 3, 2014 to the present time.

² Qualified as an expert in educational programming for student with special needs, without objection.

³ Qualified as an expert in the creation and implementation of compensatory education plans for special education students.

⁴ Qualified as an expert in special education programming and placement, over Petitioner's objection.

⁵ Qualified as an expert in school psychology, without objection.

Hearing Officer Determination

- (c) Whether DCPS denied Student a FAPE by failing to address his disability-related “truancy”/attendance issues through educational programming from October 3, 2014 to the present time.
- (d) Whether DCPS denied Student a FAPE by failing to provide him with an appropriate IEP on May 27, 2015 in that: (1) it does not provide sufficient hours of specialized instruction (full school week outside of the general education setting); (2) it reduces the hours of specialized instruction from the previous IEP, without justification or reason; (3) it does not provide Student sufficient behavioral support services outside the general education setting; (4) it does not describe “educational placement;” (5) it contains incorrect/inadequate information about Student, including the goals, baselines and Student’s need for assistive technology and positive behavior intervention strategies.
- (e) Whether DCPS denied Student a FAPE by failing to conduct an FBA and a comprehensive psychological evaluation requested by Parent in December 2015, and agreed to by the LEA.
- (f) Whether DCPS denied Student a FAPE by creating an inappropriate IEP for Student on April 4, 2016, in that: (1) the IEP team was not properly constituted when the IEP was created; (2) it does not contain sufficient hours of specialized instruction to meet Student’s needs; (3) it does not describe the appropriate educational placement; (4) it provides Student only 120 minutes per month of behavioral support services outside of the general education setting when Student required more; (5) it includes inappropriate baselines and goals, and is not individualized to Student’s needs based on his level of functioning; (6) it contains a BIP that is not based on an FBA, despite Parent’s request for an FBA.
- (g) Whether DCPS denied Student a FAPE by delegating the placement decision to the LRE team, which did not include Parent or those knowledgeable about Student.

RELIEF REQUESTED

Petitioner requested the following relief:

- (a) a finding in Petitioner’s favor, that Student has been denied a FAPE as to each issue alleged;
- (b) an Order that DCPS fund Student’s tuition and transportation to Nonpublic School and that DCPS issue a Prior Written Notice regarding this placement within 15 days of the HOD;
- (c) an Order that within 15 days of the HOD DCPS issue an IEE for an independent functional behavioral assessment and an independent comprehensive psychological evaluation, and that DCPS convene a meeting within 15 school days of receiving the independent evaluations to revise the IEP and BIP as appropriate, based on the evaluations;
- (d) an Order that DCPS convene a properly constituted IEP meeting within 15 school days of the HOD to revise Student’s IEP to: provide for 31.5 hours per week of specialized instruction outside the general education setting; provide for 1 hour per week of behavioral support services outside the general education setting; specify in the LRE section that Student requires placement in a separate special education school for students with learning disabilities, Emotional Disturbance and ADHD;

- (e) an Order that DCPS review and revise the IEP goals as appropriate to ensure that they are appropriate and can be met by Student with appropriate specialized instruction;
- (f) if the IHO does not find that Student requires a full-time separate day school as requested in paragraph 3 above, an Order that DCPS hold a properly constituted IEP meeting within 15 school days of the HOD to revise Student's IEP to align with the IHO's findings of fact regarding s's IEP and placement needs and order any other changes to the IEP that the IHO deems necessary/appropriate;
- (g) an Order awarding compensatory education as requested in Petitioner's compensatory education plan (mentoring, credit recovery or tutoring), or as fashioned by the IHO.

FINDINGS OF FACT

1. Student is [AGE] years old and is in the [GRADE] grade. Student resides in Washington, D.C. with his mother ("Parent"/ "Petitioner").⁶

2. In 2007, Student was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") and was prescribed medication, which improved Student's behavior when he was able to take the medication.⁷ Parent had made DCPS aware of the ADHD diagnosis at least as of March 2010.⁸

Behavior, Attendance, Evaluations, Classifications, Placement in the BES Program

3. On March 2, 2010, Student received an Educational Evaluation and was assessed with the Woodcock-Johnson III Tests of Achievement ("Woodcock-Johnson"). Student's academic functioning demonstrated deficits, with a broad reading standard score of 65 (very low) and a broad mathematics standard score of 88 (low average).⁹

4. Since at least 2010 and continuing through the present time, Student has demonstrated school/work avoidance issues, which have manifested in the school setting and during academic testing.¹⁰ From at least November 2013 through the present time, Student has had a severe attendance problem, missing a significant amount of class time.¹¹

5. During the 2012-2013 school year, Student was eligible for special education services under the disability classification "Specific Learning Disability" ("SLD").¹²

6. On July 15, 2013, Student received an independent Confidential Comprehensive Psychological Evaluation and was assessed with the Woodcock-Johnson.¹³ Student's academic

⁶ Testimony of Senior Educational Advocate; P-44-1.

⁷ P-13-1.

⁸ P-14.

⁹ P-12-; P-14-6.

¹⁰ P-13-3; P-15-4; P-23-2; P-42-4.

¹¹ P-9; P-10-7; P-10-8; P-36-8; P-42-1; P-42-3; P-43-1.

¹² P-15-1.

¹³ P-15.

functioning had decreased from 2010, measuring a broad reading standard score of 61 (very low) and a broad mathematics standard score of 54 (very low).¹⁴

7. DCPS conducted a review of Student's June 26, 2013 IEE on October 16, 2013 which, among other things, recommended that books on tape be used to strengthen Student's reading skills.¹⁵

8. From at least 2013 through the present time, there were times when Student was in the school building and not attending class, and also several occasions when Student was absent due to suspension.¹⁶ Since at least October 2013, Student has exhibited work avoidance behaviors that have in part been a manifestation of his ADHD.¹⁷ On October 17, 2013, a DCPS school psychologist recommended that Student's multidisciplinary team ("MDT") consider ADHD as a contributing factor to Student's academic profile.¹⁸

9. On October 17, 2013, Student's disability classification was changed to "Emotional Disturbance" ("ED"). Since that time, Student has been receiving special education services solely under the ED classification.

10. Student was placed in the BES program in October 2013.¹⁹

11. During the 2013-2014 and 2014-2015 school years, Student attended City School and was assigned to the Behavior and Emotional Support Program ("BES Program").²⁰

12. Student's October 2013 IEP provided him 60 minutes per week (240 minutes per month) of behavior services, a level that was continued with a December 19, 2013 amendment to his IEP.²¹

13. Student had a functional behavior assessment ("FBA") on May 27, 2014, which indicated that "[Student] is defiant toward authority figures, verbally and physically aggressive towards his peers and disrespectful when he is directed to do something that he doesn't want to do. Once he decides he's going to be non-compliant, he becomes verbally aggressive towards others and physically threatening. [Student]'s behavior prohibits him from attending to his academics and is disruptive to his peers in the academic environment." The FBA did not address Student's attendance issues.²²

¹⁴ P-15-8.

¹⁵ P-17-6.

¹⁶ R-5.

¹⁷ P-17; P-23-4; P-15-2.

¹⁸ P-17-6.

¹⁹ P-16.

²⁰ Testimony of Senior Educational Advocate.

²¹ Testimony of Senior Educational Advocate; P-19-2.

²² P-23.

14. Student had a behavior intervention plan (“BIP”) dated May 27, 2014.²³ It included strategies to address Student’s verbal/physical aggression and defiance, but not Student’s attendance problems.²⁴

15. During the 2015-2016 school year, Student attended District School for the first time and continued to be assigned to the BES Program.

16. Notwithstanding a few flashes of relatively positive behavior, overall, Student has manifested problematic behavior and attendance from at least October 2013 through the present time (while at City School and at District School).²⁵ Student’s behaviors have tended to include extreme use of profanity, disregard of authority, disregard for directions given and physical aggression.²⁶

17. Student’s attendance problems have intensified over years since October 2013, to the point where as of June 1, 2016 Student had 20 excused absences and 105 unexcused absences for the 2015-2016 school year. If a student missed two class periods at District School, he/she is marked absent for the day.²⁷

18. From at least November 2013 through June 2015, Student made minimal to no progress on his IEP goals. By the end of the 2014-2015 school year, he was largely regressing on his IEP goals. Student’s attendance problems and suspensions significantly contributed to his lack of academic progress.²⁸

19. During the first term of the 2015-2016 school year (which ended on October 30, 2015), Student earned all “Fs” and “Ds” on his report card, save for a “C” in Algebra I. As of Student’s second term progress report during the 2015-2016 school year (issued on December 10, 2015), Student was earning all “Fs” and “Ds.” Each document cites excessive absences as a major impediment to Student’s progress.²⁹

20. On December 16, 2015 Student’s team convened for a Manifestation Determination Review meeting to determine whether inappropriate behavior from Student (leaving the school campus without permission) was a manifestation of Student’s disability, and the team determined that it was.³⁰

21. During the December 16, 2015 IEP team meeting, Parent and her representatives requested that DCPS conduct a functional behavior assessment (“FBA”) to deal with Student’s

²³ P-24.

²⁴ P-24.

²⁵ Testimony of Senior Educational Advocate; P-10; P-8; P-6.

²⁶ Testimony of Senior Educational Advocate; testimony of School Psychologist; P-17-4; P-9; P-23; P-24; P-42; P-43.

²⁷ Testimony of Case Manager.

²⁸ P-9 (report card grades for this period of time are not included within the record.

²⁹ P-4.

³⁰ Testimony of Senior Educational Advocate; P-30.

attendance, a behavior intervention plan to be developed from the FBA once it was completed, and a comprehensive psychological evaluation to assess what if any progress Student was making or regression Student was experiencing. During the meeting, DCPS agreed to conduct the requested evaluations; however, requested that Parent sign the consent form after the winter holiday break, so that the timeline to complete the evaluations would not begin until after the break. Instead, Parent signed the form that day and post-dated the form for after the winter break.³¹

22. The comprehensive psychological evaluation was not assigned to School Psychologist to conduct until May 2016, and School Psychologist promptly began to make diligent efforts to complete it.³²

23. Shortly after the evaluation was assigned to School Psychologist, Parent's counsel telephoned School Psychologist to make suggestions about the best way to work with Parent to get the evaluation completed, and offering to assist with securing Student's participation. However, the school did not request assistance from Parent's counsel.³³

24. Parent made diligent efforts to get student to complete his portion of the evaluation, including bringing him to the school for testing.³⁴ Parent requested that School Psychologist not inform Student how long his testing portion would last, lest he get discouraged from participating. However, when Student directly inquired of School Psychologist the length of testing, School Psychologist honestly informed Student that the testing would last for 1-2 hours. Student walked out of the testing site and would not participate when he learned the length of the testing. It is possible for such testing to be broken into smaller segments of time.³⁵

25. As of the DPH, all portions of the comprehensive psychological had been completed, including Parent's portion, except the assessments Student must take. It would take approximately 1-2 hours for Student to complete his portion of the testing so that comprehensive psychological evaluation could be completed.³⁶ School Psychologist was not able to secure Student's participation in the evaluation process.

26. The BIP Parent requested on December 16, 2015 was completed on April 4, 2016.³⁷ The BIP indicates that "[Student]'s most recent behavior concerns are related to noncompliance, poor impulse control and low frustration tolerance. The behaviors have resulted in disruption to the home and school, poor interpersonal relationships, and an inability to

³¹ Testimony of Senior Educational Advocate; testimony of Case Manager; testimony of School Psychologist.

³² Testimony of Senior Educational Advocate; testimony of School Psychologist.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Testimony of School Psychologist.

³⁷ P-39.

consistently and successfully access the general education curriculum based on his cognitive abilities.”³⁸ It did not address Student’s attendance problems.

27. The FBA Parent requested on December 16, 2015 was completed on May 31, 2016.³⁹ It indicates that “[Student]’s behaviors significantly impact interpersonal relationships, with peers and adults. His inconsistent ability to regulate his impulses, low tolerance for irritation and sometimes willful defiance have resulted in failing grades and suspensions. [Student] is in danger of failing the [GRADE] grade.”⁴⁰

28. Another (proposed) BIP, based on the May 31, 2016 FBA, was created for Student as of June 9, 2016 (two business days prior to the start of the DPH). While acknowledging Student’s poor attendance, the BIP does not provide strategies to help ameliorate it.⁴¹

29. During the 2015-2016 school year, District School made a number of phone calls to Parent regarding Student’s poor attendance, and made a truancy referral to the court, as required by the law. The court did not find Parent to be culpable in Student’s poor attendance.⁴² Though Parent occasionally acquiesced to Student’s school resistance, overall Parent made diligent efforts to get Student to attend school during the 2015-2016 school year, and the team discussed this fact during the June 2016 IEP meeting.⁴³

October 3, 2014 IEP

30. DCPS generally considers a full-time program to be between 27.5 and 28.5 hours per week,⁴⁴ not including lunch, which is approximately 45 minutes per day (3.75 hours per week).⁴⁵ Students are in school roughly 32 hours per week.

31. Student’s October 3, 2014 IEP provided Student with 26 hours per week of specialized instruction outside the general education setting and reduced his level of behavioral support from 60 minutes per week (240 minutes per month) outside the general education setting to 120 minutes per month outside the general education setting.⁴⁶ This brought Student’s total amount of specialized instruction and related services to 26.5 hours outside the general education setting.

32. The team decided to reduce Student’s level of behavioral support because it did not deem his behaviors to be extreme, and because he had not availed himself of the services he

³⁸ P-39-1.

³⁹ P-42.

⁴⁰ P-42-1.

⁴¹ P-43.

⁴² Testimony of Case Manager.

⁴³ Testimony of School Psychologist.

⁴⁴ Testimony of Senior Educational Advocate; testimony of Case Manager.

⁴⁵ Testimony of Case Manager.

⁴⁶ P-25-13.

had received so far, deciding to work on Student's attendance in hopes that he would avail themselves of the services.⁴⁷

33. Student's October 3, 2014 IEP described his least restrictive environment ("LRE") as follows: "Student requires intensive specialized instruction. [Student's] behavior support services/counseling interventions will be delivered outside of the general education setting." It does not otherwise describe the type of educational setting/placement Student needs.⁴⁸

34. Student's October 3, 2014 IEP describes his attendance as "fair,"⁴⁹ and the IEP does not otherwise address Student's attendance though, as stated above, Student's attendance was poor at the time.

35. Student's October 3, 2014 IEP erroneously indicated that Student's behavior did not impede his learning or that of other students⁵⁰ though, as stated above, he was experiencing significant behavioral difficulties as of that time.

36. Student's October 3, 2014 IEP erroneously indicated that there were no assistive technology concerns for Student though, as stated above, DCPS' review of Student's June 26, 2013 IEE on October 16, 2013, among other things, recommended that books on tape be used to strengthen Student's reading skills.⁵¹

37. In Student's October 3, 2014 IEP, one of Student's written expression goals erroneously indicated that Student's "work in both general and special education setting will be modified to fit his present level of performance . . .," though Student was not receiving any instruction in the general education setting as of that time.⁵²

38. Several of the goals in Student's October 3, 2014 reflect what would ideally be realistic for a student Student's age and grade, but that do not reflect Student's significant academic deficiencies. For example, despite Student's mathematics skills being in the very low range, one of his mathematics goals was to "fluently add, subtract, multiply and divide 8 out of 10 multi-digit decimals using the standard algorithm for each operation with 80% accuracy."⁵³ Given Student's level of academic functioning, this goal as written is not likely to be attainable for Student within one school year; however, portions of it could have been dissected into a few much smaller component parts to create meaningful goals for Student, who is still working to grasp basic mathematical concepts with whole numbers, much less decimals.⁵⁴

⁴⁷ Testimony of Case Manager.

⁴⁸ P-25-14.

⁴⁹ P-25-11.

⁵⁰ P-25-3.

⁵¹ P-25-3.

⁵² P-25-10.

⁵³ P-25-6.

⁵⁴ Testimony of Senior Educational Advocate; P-25-6.

39. Student's October 3, 2014 IEP generally contained baselines that were vague (e.g. "[Student] *has difficulty* following the rules and regulations in the school environment")⁵⁵ or required several layers of analysis utilizing information not contained within the document to unpack (e.g. referencing Student's general performance on the DC CAS standardized test without explaining what such performance would mean in terms of the types of skills Student had and had not mastered). As a result, a person without close knowledge of Student, as well as familiarity with and access to the interpretive data corresponding with the DC CAS score and the knowledge to conduct the relevant analysis would struggle to know where Student's skill were as of the time the IEP was written.⁵⁶

May 27, 2015 IEP

40. Student's May 27, 2015 IEP reduced Student's level of specialized instruction outside the general education setting from 26 to 24 hours per week. It maintained Student's level of behavioral support at 120 minutes per month, outside the general education setting.⁵⁷

41. Student's May 27, 2015 IEP described his attendance as "fair" and does not otherwise address his attendance though, as stated above, Student's attendance was poor at the time.⁵⁸

42. Student's May 27, 2015 IEP erroneously indicated that Student's behavior did not impede his learning or that of other students⁵⁹ though, as stated above, he was experiencing significant behavioral difficulties as of that time.⁶⁰

43. Student's May 27, 2015 IEP erroneously indicated that there were no assistive technology concerns for Student though, as stated above, DCPS' review of Student's June 26, 2013 IEE on October 16, 2013, among other things, recommended that books on tape be used to strengthen Student's reading skills.⁶¹

44. Student's May 27, 2015 IEP described his LRE as follows: "Student requires intensive specialized instruction. [Student]'s behavior support services/counseling interventions will be delivered outside of the general education setting." It does not otherwise describe the type of educational setting/placement Student needs.⁶²

45. Several goals from the October 3, 2014 IEP were repeated in the May 27, 2015 IEP, which signifies that Student had not mastered the goals. Yet, there remained goals that fell outside of the scope of what Student could be reasonably expected to achieve during the life of the IEP (a school year or less), given his low levels of academic functioning.

⁵⁵ P-25-12 (emphasis added).

⁵⁶ Testimony of Senior Educational Advocate; testimony of Case Manager.

⁵⁷ P-28-17.

⁵⁸ P-28-15.

⁵⁹ P-25-3.

⁶⁰ P-28-3.

⁶¹ P-28-3.

⁶² P-28-18.

46. Student's IEP dated May 27, 2015 IEP failed to include actual baselines in certain areas, and instead listed goals where some of the baselines should have been.⁶³ It also continued require a reader to bring outside knowledge about Student and how the DC CAS testing process worked in order to interpret Student's current level of functioning. Therefore, while it was clear that Student generally had a low level of performance, the IEP does not provide information to know specifics about Student's current skill level in relation to each goal.⁶⁴

Proposed April 4, 2016 IEP

47. District School prepared a draft IEP for Student dated March 18, 2016, in preparation for an April 4, 2016 IEP meeting⁶⁵ ("proposed April 4, 2016 IEP").

48. On April 1, 2016, Senior Educational Advocate sent to a District School-based member of Student's IEP team written feedback on District School proposed April 4, 2016 IEP. Among other things, Senior Educational Advocate asserted that Student needed 32.5 hours outside of the general education setting (including related services), Student needed at least 60 minutes per week (240 minutes per month) of behavioral support services, Student's hours of specialized instruction outside the general education setting should not have been reduced to 25 hours per week, as it does not account for all weekly instruction, and Student cannot receive instruction inside the general education setting, it does not describe Student's appropriate educational placement, the baselines were vague, based on outdated information, and not measurable, goals were vague.⁶⁶

49. Due to an unanticipated last-minute emergency, the social worker did not attend the April 4, 2016 IEP meeting, and the team failed to get the mother to sign in agreement to proceed without a social worker or to get an additional social worker to attend the meeting. As a result, the team was unable to fully discuss the goals and modify the IEP as appropriate, and was also unable to increase (or otherwise change) the amount of behavioral support provided on Student's IEP as appropriate.⁶⁷ A follow-up meeting was convened on June 9, 2016 that the social worker attended.⁶⁸

50. The proposed April 4, 2016 IEP slightly increased Student's level of specialized instruction outside the general education setting, from 24 to 25 hours per week. It maintained Student's level of behavioral support at 120 minutes per month, outside the general education setting.⁶⁹

51. The proposed April 4, 2016 IEP based a number of Student's present levels of performance and baselines on old data – Student's Woodcock-Johnson scores (though the year of

⁶³ Testimony of Senior Educational Advocate; P-28-13 and P-28-14.

⁶⁴ See e.g. P-28-11.

⁶⁵ P-36.

⁶⁶ P-1-92; P-1-95.

⁶⁷ Testimony of Senior Educational Advocate; testimony of Case Manager; P-1-105.

⁶⁸ P-44.

⁶⁹ P-36-10.

the test relied upon is not listed) and Student's DC CAS scores from 2013-2014. Unpacking the significance of the scores to Student's current skillset for any given academic area/goal would require drawing inferences and relying on interpretive guidance not included in the body of the proposed IEP itself. While it is difficult to know specifically what Student was capable of at the time based on the present levels and baselines, it is likely that some of the goals such as "[Student] will be able to answer grade level word problems involving algebraic expressions on a teacher made assessment correctly on at least 4/5 trials" likely exceeds what could be reasonably be expected to be attainable for Student during the course of the IEP, given his significant reading and mathematics deficiencies.⁷⁰

52. The proposed April 4, 2016 IEP described Student's least restrictive environment ("LRE") as follows: "Student requires intensive specialized instruction. [Student's] behavior support services/counseling interventions will be delivered outside of the general education setting." However, incongruously, the IEP goes on to state that Student "can be educated satisfactorily in a regular classroom part of the day and in special education classroom with supplementary aids and services part day. . . ." The IEP does not otherwise describe the type of educational setting/placement Student needs.⁷¹

53. District School proposed a Behavior Intervention Plan ("BIP") for Student on April 4, 2016, which included only broad and vague global concerns for Student, rather than identifying a specific behaviors on which to work.⁷² In response to a draft of the BIP provided in advance of the meeting, Senior Educational Advocate provided written feedback on April 1, 2016 to the District School-based members of the team raising these concerns, among others.⁷³

54. The FBA Parent requested in December 2015 was completed on May 31, 2016.⁷⁴ The team discussed the FBA at that April 4, 2016 IEP meeting, and District School agreed to conduct one; however, Student's lack of attendance impeded the ability to collect observational data on the Student necessary for the FBA.⁷⁵

LRE Team

55. At least two District School-based members of Student's IEP team specifically stated that they believed Student required a more restrictive and/or different type of placement; however, they were not in a position to make such a change directly. Rather, as they understood it, DCPS policy would require them refer Student to DCPS' centralized LRE team. Yet, as they understood it, DCPS policy would forbid them from referring to the LRE team a student with an attendance history as poor as Student's.⁷⁶

⁷⁰ P-36.

⁷¹ P-36-11.

⁷² P-39.

⁷³ P-1-92 through P-1-93.

⁷⁴ P-42.

⁷⁵ Testimony of Case Manager.

⁷⁶ Testimony of Senior Educational Advocate; P-1-80; P-1-129;

56. In December 2015, one of the District School-based members of Student's IEP team (who no longer worked for DCPS as of the DPH) affirmatively referred Parent to Parent's current counsel and contacted the counsel ahead of Parent's first meeting with counsel due to concerns about the inappropriateness of Student's placement, and limited options internal to DCPS for addressing those concerns.⁷⁷

BES Program at City School District School

57. The BES program, at City School and District School, serves students with Emotional Disability or who otherwise have challenging behaviors that affect the student's learning.⁷⁸ It is the most restrictive DCPS program for students with emotional/behavioral challenges that impact their ability to access the general education setting.⁷⁹

58. BES classrooms generally have between 10-12 students, with a teacher, a behavioral tech and an aide. The classrooms are self-contained special education classrooms located in large general education buildings.⁸⁰

Nonpublic School

59. Nonpublic School is a separate special education day school serving students with Emotional Disturbance, Specific Learning Disability, Other Health Impairment (including due to ADHD), speech and language based disabilities, and Autism.⁸¹

60. Nonpublic School has approximately 60 total students split between an upper and a lower school. There are 40 students in Student's grade range. Nonpublic School is a small, contained physical environment, and Student would primarily remain on one hallway throughout school day. The maximum class size at Nonpublic School is nine students with one teacher and one assistant teacher.⁸²

61. Nonpublic School offers remediation, including through a daily resource class (providing remediation in reading and/or mathematics), and computer technology for students who are below grade level in reading and mathematics.

62. All Nonpublic School staff members are certified in a state-approved crisis intervention model. There are two behavioral managers, one behavioral specialist, two full-time and two part-time counselors dedicated for the 40 students in Student's grade range.

63. When student at Nonpublic School is experiencing a behavioral crisis, there is a designated portion of the building where they can go to deescalate and receive support (the support area). Student can also go to the counselors' offices for support.⁸³

⁷⁷ Testimony of Senior Educational Advocate.

⁷⁸ P-45-7.

⁷⁹ Testimony of School Psychologist.

⁸⁰ Testimony of Senior Educational Advocate; P-45.

⁸¹ Testimony of Program Director (Nonpublic School).

⁸² *Id.*

⁸³ *Id.*

64. Nonpublic School has a schoolwide behavioral system, and also provides individual behavior plans for students, as appropriate.⁸⁴ Some Nonpublic School students have histories of multiple suspensions prior to arriving at the school, and Nonpublic School rarely utilizes suspension.⁸⁵

65. Nonpublic School has students who have come to the school with the adverse behavior of walking the halls and not attending class. The school keeps daily behavior data on all students, and if a student is engaging in hall walking, it meets with the student and behavior staff to develop a plan including incentives and consequences to deter the behavior. If a student walks out of the classroom inappropriately and does not proceed to the support area, a staff member follows the student, keeps the student in sight at all times, and works to engage the student and encourage him/her to return to class. It is difficult for a student to be out of area in Nonpublic School.⁸⁶

66. Student has been accepted to Nonpublic School,⁸⁷ it could meet his behavioral and academic needs, and it could implement at 27.5 hour per week IEP, 30-60 minutes per week behavioral support.⁸⁸

67. Nonpublic School has a current certificate of approval from the Office of State Superintendent of Education (“OSSE”).⁸⁹

68. The yearly tuition (including educational and behavioral services) at Nonpublic School is \$42,000 per year. Counseling services are billed at \$117 per hour. OSSE has approved these rates.⁹⁰

69. When DCPS students are placed at Nonpublic School, OSSE transports the students to and from the school.⁹¹

Requested Compensatory Education Program

70. Compensatory Education Service provides mentoring and tutoring services to students who have become disengaged from school. Over an initial 2-3 week period, it administers assessments to such students to determine what type of school avoidance issue they are experiencing and the best type of intervention, and also begin relationship building with the students.⁹²

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ P-11.

⁸⁸ Testimony of Program Director (Nonpublic School).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Testimony of Compensatory Education Provider.

71. Student will be repeating his grade level from the 2015-2016 school year during the 2016-2017 school year. Student has missed at least two years academic growth over the past two years. He needs mentoring services to help him reengage with the learning process, and tutoring services to help him make up for the his academic losses over the past two years.⁹³

72. It is not possible to know at this point how much mentoring would be required to help student reengage in learning and become receptive to tutoring and academic instruction. However 300 total hours of mentoring/tutoring, allocated in alignment with his needs and response rate, is approximately what Student could tolerate in addition to his academic instruction. Tutoring and mentoring services are billed at the same rate.⁹⁴

CONCLUSIONS OF LAW

“Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). Through documentary evidence and witness testimony, the party seeking relief must persuade the impartial hearing officer by a preponderance of the evidence. DCMR 5-E3022.16; *see also*, *N.G. v. District of Columbia*, 556 F.Supp.2d 11, 17 n.3 (D.D.C. 2008).

A hearing officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the student’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

- (a) Whether DCPS denied Student a FAPE by failing to provide him with an appropriate IEP on October 3, 2014 in that: (1) it does not provide sufficient hours of specialized instruction (full school week outside of the general education setting); (2) it reduces Student’s behavioral support services by half without justification; (3) it does not describe “educational placement;” (4) it contains incorrect/inadequate information about Student including the goals, baselines, and Student’s need for assistive technology and positive behavior intervention strategies.**

An “IEP must, at a minimum, ‘provide personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.’” *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005), quoting *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 203, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). While an LEA is not required to maximize a student’s educational potential, it also cannot “discharge its duty under the [IDEA] by providing a program that

⁹³ P-2.

⁹⁴ Testimony of Senior Educational Advocate.

produces some minimal academic advancement, no matter how trivial.” *Hall ex rel. Hall v. Vance County Bd. of Educ.*, 774 F.2d 629, 636 (4th Cir.1985). As of the October 3, 2014 IEP, Student had been in the BES program for a year. Despite Student’s persistent academic, behavioral and attendance struggles and work avoidance issues, Student’s level of behavioral support was cut in half, and he was provided 26.5 hours of specialized instruction and related services outside the general education setting though, at a minimum, a full-time DCPS program is 27.5 hours per week. As discussed in the Findings of Fact above, the IEP included several errors (including erroneously indicating that he did not have assistive technology needs and that his behavior did not impede his learning and that of other students). It contained vague baselines, several of the goals were more aspirational than realistically attainable for Student at his skill level at the time, and it did not include any information about what type of classroom/setting the team thought Student would need. The IEP was not reasonably calculated to provide Student educational benefit. Because it impeded Student’s right to a FAPE and caused a deprivation of educational benefit, it rises to the level of a substantive denial of FAPE. Parent met the burden of proof on this issue.

(b) Whether DCPS denied Student a FAPE by providing him an inappropriate educational placement from at least October 3, 2014 to the present time.

Once an IEP is developed, an LEA must also ensure that the student is located in a placement/school setting “based on the child’s IEP.” 34 C.F.R. § 300.116. Student has been assigned to the BES program since October 2013, and has continued to exhibit lack of progress and/or regression behaviorally, academically and regarding his attendance. If nothing else, Student at least needed a full-time IEP, which he has not had from October 2014 through the present time. Additionally, the physical setting of a self-contained classroom within a large general education school has not worked well for Student who is prone to avoiding classes, such as by walking the hallways. By the 2015-2016 school year, even some school-based members of Student’s IEP team were convinced that Student needs a different type of placement. Given Student’s lack of overall progress in his nearly three years in the BES program, his program should have been more restrictive at least as of his October 2014 IEP. The lack of the appropriate level of restrictiveness impeded Student’s right to a FAPE and caused a deprivation of educational benefit; therefore, it rises to the level of a substantive denial of FAPE. Parent met the burden of proof on this issue.

(c) Whether DCPS denied Student a FAPE by failing to address his disability-related “truancy”/attendance issues through educational programming from October 3, 2014 to the present time.

When a student’s behavior “impedes the child’s learning or that of others,” the student’s IEP team must consider the use of positive behavioral interventions and supports, and other strategies to address that behavior. Student’s IEPs from October 2014 through the present time have included social-emotional goals, and have addressed some of his challenging behaviors, as have his FBA and BIP. However, none of these documents addresses Student’s attendance to any significant degree. District School telephoned Parent regarding Student’s attendance and make truancy referral to the court during the 2015-2016 school year; however, these actions do not equate to Student’s IEP team considering and strategizing specific interventions to help

improve Student's attendance. The lack of documentation of any such discussions/considerations in Student's IEPs, FBAs and BIP from October 2014 through the present time significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, impeded Student's right to a FAPE and caused a deprivation of educational benefit, it rises to the level of a substantive denial of FAPE. Parent met the burden of proof on this issue.

- (d) Whether DCPS denied Student a FAPE by failing to provide him with an appropriate IEP on May 27, 2015 in that: (1) it does not provide sufficient hours of specialized instruction (full school week outside of the general education setting); (2) it reduces the hours of specialized instruction from the previous IEP, without justification or reason; (3) it does not provide Student sufficient behavioral support services outside the general education setting; (4) it does not describe "educational placement;" (5) it contains incorrect/inadequate information about Student, including the goals, baselines and Student's need for assistive technology and positive behavior intervention strategies.**

As stated above in conjunction with issue "(a)," and IEP must be personalized to a student's needs and reasonably calculated to provide the student educational benefit. As of the May 27, 2015 IEP, Student had been in the BES program for nearly two school years. Despite Student's persistent academic, behavioral and attendance struggles and work avoidance issues, Student's level of specialized instruction outside the general education setting was reduced from 26 to 24 hours per week without any corresponding increase in his related services, bringing him even further below the 27.5 hours per week (at a minimum) necessary to provide him a full-time program. Student's behavioral support continued at the reduced level of 120 minutes per month, though he had not made behavioral progress. As discussed in the Findings of Fact above, the IEP included several errors (including erroneously indicating that he did not have assistive technology needs and that his behavior did not impede his learning and that of other students). It contained vague baselines, several of the goals were more aspirational than realistically attainable for Student at his skill level at the time, and it did not include any information about what type of classroom/setting the team thought Student would need. The IEP was not reasonably calculated to provide Student educational benefit. Because it impeded Student's right to a FAPE and caused a deprivation of educational benefit, it rises to the level of a substantive denial of FAPE. Parent met the burden of proof on this issue.

- (e) Whether DCPS denied Student a FAPE by failing to conduct an FBA and a comprehensive psychological evaluation requested by Parent in December 2015, and agreed to by the LEA.**

Parent requested, and DCPS agreed to conduct, an FBA and a comprehensive psychological evaluation in December 2015. All parties agreed that the evaluations would be conducted after the winter break. However, the comprehensive psychological was not assigned to School Psychologist to conduct until early May 2016, and work on the FBA began in April 2016 and was completed at the end of May 2016. The IDEA does not mandate a time frame

within which an LEA must conduct a reevaluation after receiving a request from a student's parent. *See Herbin v. District of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005). However, "[r]evaluations should be conducted in a 'reasonable period of time,' or 'without undue delay,' as determined in each individual case." *Id.* (quoting *Office of Special Education Programs Policy Letter in Response to Inquiry from Jerry Saperstone*, 21 IDELR 1127, 1129 (1995)). *See, also, Smith v. District of Columbia*, 2010 WL 4861757, 3 (D.D.C. Nov. 30, 2010). In this case, Student's lack of academic, behavioral and attendance progress as of December 2015 was significant, despite the fact that he had been in DCPS most restrictive behavioral support program since October 2013. Student had severe work avoidance issues, and his disability classification potentially needed to be revisited/expanded given his ADHD and former SLD classification. For these reasons, time was of the essence with respect to getting the requested evaluations completed. Additionally, given Student's sporadic attendance, it would have been important to begin working on the evaluations as soon as possible to allow maximum time to secure Student's participation. Given the circumstances, there was an unreasonable delay in conducting Student's comprehensive psychological and FBA. Near the end of the school year, Student's FBA had just been completed and Student's comprehensive psychological had still not been completed. The delay in conducting the evaluations impeded Student's right to a FAPE, significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and caused a deprivation of educational benefit; therefore, it rises to the level of a substantive denial of FAPE. Parent met the burden of proof on this issue.

- (f) Whether DCPS denied Student a FAPE by creating an inappropriate IEP for Student on April 4, 2016, in that: (1) the IEP team was not properly constituted when the IEP was created; (2) it does not contain sufficient hours of specialized instruction to meet Student's needs; (3) it does not describe the appropriate educational placement; (4) it provides Student only 120 minutes per month of behavioral support services outside of the general education setting when Student required more; (5) it includes inappropriate baselines and goals, and is not individualized to Student's needs based on his level of functioning; (6) it contains a BIP that is not based on an FBA, despite Parent's request for an FBA.**

As stated above in conjunction with issue "(a)," and IEP must be personalized to a student's needs and reasonably calculated to provide the student educational benefit. As of the proposed April 4, 2016 IEP, Student was nearing the conclusion of his third school year the BES program. Despite Student's persistent academic, behavioral and attendance struggles and work avoidance issues, Student's level of specialized instruction outside the general education setting was increased by only one hour per week (from 24 to 25 hours) without any corresponding increase in his related services. At 25.5 hours per week of specialized instruction and related services outside the general education setting, Student continued to fall below the number of hours required for a full-time program. Student's behavioral support continued at the reduced level of 120 minutes per month, though he had not made behavioral progress. As discussed in the Findings of Fact above, the IEP included vague baselines, and several of the goals were more aspirational than realistically attainable for Student at his skill level at the time. Additionally, it did not include any information about what type of classroom/setting the team thought Student

would need. Senior Educational Advocate raised some concerns to the school-based team members prior to the meeting, but because no social worker was present at the meeting, many of those concerns could not be addressed until the team reconvened in June 2016. Though a BIP was provided, it was not based on the data contained in the FBA, which was not completed until over a month later, despite the fact that Parent had requested an FBA in December 2015. The IEP was not reasonably calculated to provide Student educational benefit. Because it impeded Student's right to a FAPE, significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and caused a deprivation of educational benefit, it rises to the level of a substantive denial of FAPE. Parent met the burden of proof on this issue.

(g) Whether DCPS denied Student a FAPE by delegating the placement decision to the LRE team, which did not include Parent or those knowledgeable about Student.

“In determining the educational placement of a child with a disability . . . each public agency must ensure that the placement decision is made by a group of persons including the parents, and other persons knowledgeable about the child . . .” 34 C.F.R. § 300.116(a)(1). Here, Parent, Parent's representative, and at least two school-based members of Student's IEP team were convinced that Student needed a different type of and/or more restrictive placement. One school-based member of the team (no longer employed by DCPS) even went so far as to refer Parent to her current counsel due to concerns about the inappropriateness of Student's placement. Yet, the team felt constrained in its ability to specify Student's placement needs, perceiving a need to defer to a central DCPS LRE team. There is no indication from the record that anyone on the LRE team knows Student, which is particularly significant given the lack of specificity and clarity in Student's IEPs, and considering that his lack of attendance, which could be willful for some students, is a disability-related work avoidance issue in Student's case. The failure to change Student's placement, from at least October 2014 through the present time, in deference to the LRE process significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student, and caused a deprivation of educational benefit, it rises to the level of a substantive denial of FAPE. Parent met the burden of proof on this issue.

Request for Nonpublic School

An order for DCPS to fund a placement at Nonpublic School is part of the relief Petitioner seeks for the denials of FAPE. Yet a denial of FAPE does not necessarily entitle a Student to private school placement at public expense. “An inadequate IEP is a necessary but insufficient condition for private school placement and reimbursement.” *N.T. v. District of Columbia*, 839 F.Supp.2d 29, 34 (D.D.C.2012); *Branham v. Gov't of the District of Columbia*, 427 F.3d 7, 8, 11 (D.C. Cir. 2005). Placement awards, must be tailored to meet the child's specific needs. *Id.* To inform this individualized assessment, courts have identified a set of considerations relevant to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least

restrictive educational environment. *Branham* at 12. Following is a discussion of each of the *Branham* factors as they relate to the facts of this case.

a. Nature and Severity of Student's Disability

In 2007, Student was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD"). During the 2012-2013 school year, Student was eligible for special education services under the disability classification "Specific Learning Disability" ("SLD"). Since at least October 2013, Student has exhibited work avoidance behaviors that have in part been a manifestation of his ADHD. On October 17, 2013, Student's disability classification was changed to "Emotional Disturbance" ("ED"). Since that time, Student has been receiving special education services solely under the ED classification. Student is defiant toward authority figures, verbally and physically aggressive towards his peers and disrespectful when he is directed to do something that he doesn't want to do. Once he decides he's going to be non-compliant, he becomes verbally aggressive towards others and physically threatening. Student has had significant attendance problems and multiple suspensions since at least October 2013. As of his most recent comprehensive psychological evaluation in 2013, Student's academic functioning had decreased from 2010, measuring a broad reading standard score of 61 (very low) and a broad mathematics standard score of 54 (very low).

b. Student's Specialized Educational Needs

Student needs a full-time outside of the general education setting with sufficient remedial support to address his academic deficits, sufficient therapeutic supports to address his emotional dysregulation and behavior challenges, and that is physically small and restrictive enough to impede his ability to wander the halls and avoid the uncomfortable task of beginning to bridge the gaps in his current skill level.

c. Link between Student's Needs and the Services Offered by Private School

Nonpublic School is a separate special education day school serving students with Emotional Disturbance, Specific Learning Disability, Other Health Impairment (including due to ADHD). It is a small, contained physical environment, and Student would primarily remain on one hallway throughout school day. Nonpublic School offers regular remediation, all its staff are trained in crisis intervention, and it has significant physical and human resources devoted to therapeutically supporting students as needed. If a student walks out of the classroom inappropriately, a staff member follows the student, keeps the student in sight at all times, and works to engage the student and encourage him/her to return to class. It is difficult for a student to be out of area in Nonpublic School.

d. Cost of Placement at Private School

The yearly tuition (including educational and behavioral services) at Nonpublic School is \$42,000 per year. Counseling services are billed at \$117 per hour. OSSE has approved these rates; therefore, the Hearing Officer deems them to be reasonable.

e. Extent to Which Private School Represents Least Restrictive Environment ("LRE")

For approximately three years, Student has been in the most restrictive DCPS behavioral support program available and made negligible to no progress academically, behaviorally, and

regarding his attendance. Student's work avoidance issues, ADHD, and other behavioral/emotional issues are not compatible with a self-contained classroom within a large general education school as of this time. Additionally, Student needs significant academic remediation. As of this time, a separate special education day school is his LRE.

Based on the *Branham* factors discussed above, Nonpublic School would be appropriate for Student's needs.

Compensatory Education

IDEA gives hearing officers "broad discretion" to award compensatory education as an "equitable remedy" for students who have been denied a FAPE. *See Reid, supra*, 401 F.3d at 522-23. The award must "provide the educational benefits that likely would have accrued from special education services" that the school district "should have supplied in the first place." *Id.* at 524. A compensatory education award must "rely on individualized assessments" after a "fact specific" inquiry. *Id.* "In formulating a new compensatory education award, the hearing officer must determine 'what services [the student] needs to elevate him to the position he would have occupied absent the school district's failures.'" *Stanton v. Dist. of D.C.*, 680 F.Supp.2d 201, 206 (D.D.C. 2010), quoting *Anthony v. District of Columbia*, 463 F.Supp.2d 37, 44 (D.D.C. 2006); *Reid*, 401 F.3d at 527. *See also, e.g., Turner v. District of Columbia*, 2013 WL 3324358, 10-11 (D.D.C. July 2, 2013).

Here, Student was harmed by inadequate IEPs, placements, and levels of specialized instruction and related services over at least the past two years. At this point, he is so disengaged from school that specific effort to help him reconnect to the world of learning will be necessary in order for him to have a realistic chance of making progress. Once he has reengaged, he will need support even beyond the remediation Nonpublic School will provide to bridge the gap between where he is and where he will need to be graduate and navigate the world with some degree of facility. Toward that end, the Hearing Officer credits the testimony of Senior Educational Advocate that a blend of mentoring and tutoring services is appropriate for Student. Respondent argues that Petitioner's request that Compensatory Education Service be allowed to follow Student's progress and lead in determining how to allocate the requested 300 hours of services between tutoring and mentoring is not appropriate. However, in this particular instance, it is not yet possible to know how quickly Student will respond to the mentoring, which should likely precede the tutoring in order for the services to have maximum effect. In that respect, allowing the provider and Parent some flexibility in allocating the services is responsive to Student's specific needs. Though ultimately, the amount of tutoring service hours that will be available after Student has received sufficient mentoring services to begin reengaging cannot be known, the requested boundary of 300 hours factors in the level of services Student can actually tolerate, in addition to what he needs. For these reasons, the Hearing Officer finds the proposed compensatory education plan to be a reasonable means of restoring the services Student should have received during the past two years, in the context of the fact specific inquiry reflected above.

ORDER

Based on the Findings of Fact and Conclusion of Law above, it is hereby **ORDERED** that:

Hearing Officer Determination

- A. Within 15 school days of this decision, DCPS fund Student's tuition and transportation to Nonpublic School and that DCPS issue a Prior Written Notice regarding this placement;
- B. Within 15 school days of this decision, DCPS shall issue authorization for an independent functional behavioral assessment and an independent comprehensive psychological evaluation,
- C. Within 15 school days of receiving the independent evaluations referenced in Order "B," DCPS shall convene Student's IEP team to revise Student's IEP and BIP as appropriate, based on the evaluations;
- D. Within 15 school days of this decision, DCPS shall reconvene Student's IEP to: provide for full-time specialized instruction outside the general education setting;⁹⁵ provide for 1 hour per week of behavioral support services outside the general education setting; specify in the LRE section that Student requires placement in a separate special education school for students with learning disabilities, Emotional Disturbance and ADHD; and review and revise the IEP goals and baselines to ensure that they are appropriate;
- E. Within 15 school days of this decision, DCPS shall issue to Parent authorization for 300 hours of mentoring and/or tutoring services⁹⁶ that can be used with Compensatory Education Provider. The tutoring and/or mentoring services shall be funded at the standard DCPS rate.

All other relief Petitioner requested in the complaint is **DENIED**.

IT IS SO ORDERED.

Date: June 28, 2016

/s/ NaKeisha Sylver Blount
Impartial Hearing Officer

Copies to:

Petitioner (by U.S. mail)

Petitioner's Attorney (electronically)

DCPS' Attorney (electronically)

Chief Hearing Officer Virginia Dietrich, Esq. (electronically)

OSSE-SPED (electronically)

ODR (electronically)

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination, in accordance with 20 U.S.C. §1415(i).

⁹⁵ The testimony at the DPH was that a school week at Nonpublic School is 27.5 hours per week, and that Nonpublic School could implement a 27.5 hour per week IEP for Student.

⁹⁶ The allocation of the 300 hours between mentoring and tutoring services shall be determined by Parent.